

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.830 OF 2007

IN

SESSIONS CASE NO.781 OF 2005

(C.R.NO.149 OF 2005 OF BHANDUP P.ST.)

Shafaqut Emamali Sayyad ..Applicant

Vs.

State of Maharashtra ..Respondents

Mr.Hakim Salim AR advocate for applicant
Mr.Rajesh More A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : MARCH 26, 2007

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking bail in CR NO.149 of 2005 Bhandup Police Station. The said case is mainly under Sections 498-A and 302 of IPC.

3. The applicant is the husband of deceased Nasrin. The applicant used to harass and illtreat Nasrin. On the day of incident, the applicant poured kerosene on Nasrin and he lit a match stick

and set her on fire. After Nasrin caught fire, she started crying and shouting and neighbours gathered there and extinguished the fire. Thereafter, Nasrin was taken to Hospital. Her dying declaration came to be recorded wherein she has stated the role as above of the applicant.

4. The learned advocate for the applicant submitted that dying declaration recorded by the S.E.M. does not bear the endorsement of the Doctor, hence, the dying declarations cannot be relied upon. The present case is not based only on dying declaration recorded by the S.E.M. There is one more dying declaration on record, in which the deceased has given the same role to the applicant. The said dying declaration bears the endorsement of the Doctor. Moreover, in the decision of the **State Vs. State of Maharashtra; (2002) 6 SCC 701**, five-Judge Bench of the Supreme Court has observed that if the dying declaration does not bear the endorsement of the Doctor, it would not be fatal to the prosecution case. Hence, I find no merit in this submission.

5. The learned advocate for the applicant

thereafter submitted that the above two dying declarations are false and concocted because none of the neighbours who had gathered there, stated that Nasrin told them that the applicant set her on fire. In support of this contention, he has placed reliance on the statement of three witnesses i.e. Parveen, Sadiq and Shamim who have stated that they did not know how the deceased caught fire. All these witnesses are neighbours of the applicant and the deceased. It is well known that nowadays people who live in neighbouring house, are loathe to implicate their neighbours. Thus, I am not much substance in this submission.

6. Thereafter, the learned counsel for the applicant submitted that the applicant himself took Nasrin to hospital, this shows that the applicant could not have set Nasrin on fire. However, it is seen that applicant took Nasrin to the hospital only after the neighbours gathered there and neighbours extinguished fire. In such circumstances, the applicant had no option but to take Nasrin to the hospital.

7. The learned counsel also submitted that in fact

the applicant also tried to extinguish the fire which is stated by Mr.Sadiq Ali. I have perused the statement of Sadiq. Sadiq stated that after he heard shouts, he entered the room and found that Nasrin was burning. He was followed by Parveen and Shamim. Thereafter, this witness has categorically stated that he took a blanket from the house of Nasrin and he put it on the body of Nasrin and tried to extinguish the fire. It is only thereafter that the applicant tried to extinguish the fire. Similar statement has been made by other witness. In such circumstances, it is clear that all these neighbours came first and extinguished the fire and only thereafter if at all, the applicant tried to extinguish the fire.

8. The learned advocate for the applicant has placed reliance on certain observations of the Supreme Court in the case of **Bhagirathsinh Judeja Vs.State of Gujarat; AIR 1984 S.C. 372**. However, it is seen that these observations have not been made in a case for bail but in a case for cancellation of bail and observations made therein have been made in the light of the issue before the Court. Hence, the said case would be of no help to

the case of the applicant.

9. Lastly, it was submitted that co-accused i.e. mother of the applicant has been released on bail and hence, applicant ought to be granted bail on the ground that the co-accused has been granted bail. In support of this contention, reliance is placed on the decision of this Court in the case of **Kunal Ramdas Chavan Vs. State of Maharashtra; 2001 ALL MR (Cri.) 1403**. I have perused the said decision. In the present case, co-accused has been granted bail as she is an aged lady and also on humanitarian ground i.e. to take care of the children of the applicant. The applicant is neither aged nor a lady. Moreover, his mother is already released on bail in order to take care of the children. In such case, the grounds on which the co-accused came to be released on bail, cannot be made applicable to the present case in any way and hence, the applicant cannot be granted bail on the ground of parity.

10. Application is rejected.

[V.K.Tahilramani, J.]